

ACQUISITION AND CROSS-SERVICING AGREEMENT

BETWEEN

THE GOVERNMENT

OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF MALAYSIA

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(US-MY-02)
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PREAMBLE

This Agreement is made the 9th day of May 2005 between the Government of the United States of America as represented by the Department of Defense and the Government of Malaysia as represented by the Ministry of Defence (hereinafter collectively referred to as the "Parties" and individually as the "Party") desiring to further the interoperability, readiness, and effectiveness of their respective military forces through increased logistic cooperation, have resolved to conclude this Acquisition and Cross-Servicing Agreement (the Agreement).

I. PURPOSE

This Agreement is entered into for the purpose of establishing basic terms, conditions, and procedures to facilitate the reciprocal provision of Logistic Support, Supplies, and Services as that term is defined in Article III of this Agreement; to facilitate reciprocal logistic support between the Parties to be used primarily during combined exercises, training, deployments, operations, or other cooperative efforts; and for unforeseen circumstances or exigencies in which one of the Parties may have a need of Logistic Support, Supplies, and Services.

II. APPLICABILITY

1. This Agreement applies to the reciprocal provision of Logistic Support, Supplies, and Services between the military forces of one Party by the other Party in return for either cash payment or the reciprocal provision of Logistic Support, Supplies, and Services to the military forces of the other Party in accordance with the terms of this Agreement.
2. All activities of the Parties under this Agreement and any Implementing Arrangements shall be carried out in accordance with their respective laws and regulations. All obligations of the Parties under this Agreement and any Implementing Arrangements shall be subject to the availability of funds for such purposes.
3. The following items are not eligible for transfer under this Agreement and are specifically excluded from its coverage:

- a. weapon systems;
 - b. major end items of equipment (except for the lease or loan of general purpose vehicles and other nonlethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List);
 - c. initial quantities of replacement and spare parts associated with the initial order quantity of major items of organizational equipment covered in tables of allowances and distribution, tables of organization and equipment, and equivalent documents.
4. Also excluded from transfer by either Party under this Agreement are any items the transfer of which are prohibited by its laws or regulations. The following items are currently excluded from transfer by United States laws and regulations:
- a. guided missiles;
 - b. naval mines and torpedoes;
 - c. nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition;
 - d. cartridge and air crew escape propulsion system components;
 - e. chaff and chaff dispensers;
 - f. guidance kits for bombs or other ammunition;
 - g. chemical ammunition (other than riot-control agents);
 - h. source, byproduct, or special nuclear materials, or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (Title 42, United States Code, Section 2011, et. seq.).

III. DEFINITIONS

1. As used in this Agreement and in any Implementing Arrangements which provide specific procedures, the following definitions apply:
 - a. **Logistic Support, Supplies, and Services.** Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communication services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and seaport and airport services. Such term also includes the temporary use of general purpose vehicles and other non-lethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List.
 - b. **Implementing Arrangement.** A written supplementary agreement which contains additional details, terms and conditions related to a specific acquisition and/or transfer of Logistic Support, Supplies, and Services.

- c. Order. A written request, in an agreed upon format and signed by an authorized official, for the provision of specific Logistic Support, Supplies, and Services pursuant to this Agreement and any applicable Implementing Arrangement.
- d. Invoice. A document from the supplying Party which requests reimbursement or payment for specific Logistic Support, Supplies, and Services rendered pursuant to this Agreement and any applicable Implementing Arrangements.
- e. Transfer. Selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing Logistic Support, Supplies, and Services under the terms of this Agreement and any applicable Implementing Arrangement.
- f. Replacement-in-kind. Payment for a transfer conducted under this Agreement in which it is agreed that the receiving Party shall replace Logistic Support, Supplies, and Services that it receives with Logistic Support, Supplies, and Services of an identical, or substantially identical, nature under agreed conditions.
- g. Equal value exchange. A transfer conducted under this Agreement in which it is agreed that the receiving Party shall replace Logistic Support, Supplies, and Services that it receives with Logistic Support, Supplies, and Services of an equal monetary value.
- h. United States Munitions List. U.S. Defense articles and defense services which are designated by the U.S. President under the Arms Export Control Act as subject to export controls. The U.S. Munitions List is published in Part 121 of Title 22 of the U.S. Code of Federal Regulations.
- i. Receiving Party. The Party ordering and receiving Logistic Support, Supplies and Services.
- j. Supplying Party. The Party providing Logistic Support, Supplies and Services.

IV. TERMS AND CONDITIONS

1. Each Party shall make its best efforts, consistent with national policies and priorities, to satisfy requests from the other Party under this Agreement for Logistic Support, Supplies, and Services. When an Implementing Arrangement contains specific details for satisfying such requests, these details shall be complied with.
2. Each Party agrees that the Transfer of Logistic Support, Supplies, and Services between the Parties shall be accomplished by Orders in the following manner:
 - a. Orders may be placed or accepted only by the points of contact (POCs), or designees, identified by the Parties in Annexes B through N of this Agreement.

- b. When military forces of the Ministry of Defence of Malaysia require Logistic Support, Supplies, or Services outside the US Pacific Command's (USPACOM) Area of Responsibility (AOR), the Order may be placed directly with the cognizant POC or the military forces of Malaysia may seek the assistance of USPACOM, or a USPACOM Component Command, so that an Order may be placed with a non-USPACOM POC.
3. An Implementing Arrangement under this Agreement may be negotiated on behalf of the U.S. Department of Defense by Headquarters, USPACOM, the Headquarters of other United States combatant commands, or their designated subordinate commands. On the part of Malaysia, the Ministry of Defence Malaysia, and where specifically authorized by the Secretary General of the Ministry of Defence Malaysia, the relevant individual Services of the Armed Forces of Malaysia shall have the authority to negotiate an Implementing Arrangement. Implementing Arrangements must identify POCs and their specific authorizations or limitations.
4. Prior to submitting a written Order, the requesting Party should initially contact the supplying Party's POC by telephone, fax, or e-mail to ascertain availability, price, and desired method of repayment for required materiel or services. Orders must include all the data elements in Annex A, as well as any other terms and details necessary to carry out the transfer. Instructions and a standard order form are attached at Annex N. The number of this Agreement, US-MY-02, should be annotated on all Orders and related correspondence.
5. The receiving Party is responsible for:
 - a. Arranging pickup and transportation of supplies acquired under this Agreement. This does not preclude the supplying Party from assisting with loading supplies acquired under this Agreement onto the transportation conveyance. The supplying Party shall notify the receiving Party when and where supplies are available to be picked up.
 - b. Obtaining the applicable customs clearance and arranging other official actions required by national customs regulations.
6. The individual picking up the supplies or receiving the services on behalf of the receiving Party shall sign the standard order form (Annex N) in the appropriate block as evidence of receipt. If the standard order form is not available at the supplying Party's point of issue, the individual collecting the supplies shall sign the receipt document provided by the supplying Party as a substitute. The number of this Agreement, US-MY-02, shall be entered on the receipt document. The supplying Party shall forward the signed receipt document to the activity authorized to accept orders under this Agreement where the signed receipt document shall be attached to the original order form by the receiving Party.
7. Logistic Support, Supplies, and Services received through this Agreement shall not be retransferred, either temporarily or permanently, to any person other than a member of the forces of the receiving Party without the prior written consent of the supplying Party.

V. REIMBURSEMENT

1. For transfers of Logistic Support, Supplies, and Services under this Agreement, the Parties shall agree for payment either by cash ("reimbursable transaction"), by replacement-in-kind, or by an equal-value exchange ("exchange transaction"): The receiving Party shall pay the supplying Party as provided in either paragraph 1a. or paragraph 1b. of this Article, as agreed.

a. Reimbursable Transaction. The supplying Party shall submit Invoices to the receiving Party after delivery or performance of the Logistic Support, Supplies, and Services. Both Parties shall provide for the payment of all transactions and each Party shall invoice the other Party at least once every 3 months for all completed transactions not previously invoiced. Invoices shall be accompanied by necessary support documentation and shall be paid within 60 days of the date prepared. In pricing a reimbursable transaction, the Parties agree to the following reciprocal pricing principles:

(1) In the case of specific acquisition by the supplying Party from its contractors on behalf of a receiving Party, the price shall be no less favorable than the price charged the armed forces by the contractor of the supplying Party for identical Logistic Support, Supplies and Services, less any amounts excluded by Article VI of this Agreement. The price charged may take into account differentials due to delivery schedules, points of delivery, and other similar considerations.

(2) In the case of Transfer from the supplying Party's own resources, the supplying Party shall charge the same price it charges its own forces for identical Logistic Support, Supplies, and Services, as of the date delivery or performance occurs, less amounts excluded by Article VI of this Agreement. In any case where a price has not been established or charges are not made for one's own forces, the Parties shall agree on a price in advance, reflecting reciprocal pricing principles, excluding charges that are precluded under these same reciprocal pricing principles. However, in the case of items, the price shall be no less than the supplying Party's acquisition cost.

b. Exchange Transaction. Exchange transactions may be by replacement-in-kind or equal-value-exchange. Both Parties shall maintain records of all transactions. The receiving Party shall pay by transferring to the supplying Party Logistic Support, Supplies, and Services that are agreed between the Parties to be in kind or of equal monetary value to the Logistic Support, Supplies, and Services delivered or performed by the supplying Party. If the receiving Party does not complete the exchange within the terms of a replacement schedule agreed to or in effect at the time of the original transaction, which may not exceed one (1) year from the date of the original transaction, the transaction shall be deemed reimbursable and governed by paragraph 1a above, except that the price shall be established using actual or estimated prices in effect on the date payment would otherwise have been due.

c. Establishment of Price or Value. The following pricing mechanisms are provided to clarify application of the reciprocal pricing principles. The price established for inventory stock materiel shall be the supplying Party's stock list price. The price for new procurement shall be the same price paid to the contractor or vendor by the supplying Party. The price for services rendered will be the supplying Party's standard price, or, if not applicable, the costs directly associated with providing the services. For example, for repair and maintenance services the costs would be the supply stocklist prices plus actual labor costs and any other costs directly associated with providing the service, e.g., the appropriate proportion of temporary duty (TDY) per diem and transportation costs if the service is rendered in a TDY status. Prices charged shall exclude all taxes and duties which the receiving Party is exempted from paying under other agreements which the Governments of the Parties have concluded. Upon request, the Parties agree to provide information sufficient to verify that these reciprocal pricing principles have been followed and that prices do not include waived or excluded costs.

d. Means of Payment. The following means of payment shall be acceptable:

- (1) Payment-in-cash. Payment shall be made in the currency of the supplying Party or as otherwise agreed in the Order.
- (2) Replacement-in-kind. When Replacement-in-kind is used as the method of payment, the receiving Party shall replace or return supplies in the same condition and conforming to the same configuration as the supplies provided by the supplying Party, or, if so agreed, a later configuration within one year of receipt. The receiving Party is responsible for negotiating return transportation and delivery to the location designated by the supplying Party at the time of request. If the receiving Party does not replace or return supplies within one year, payment must be in cash.
- (3) Equal-value-exchange. To the extent possible, when Equal-value-exchange is the desired method of payment, prior to the provision of the requested support, both Parties shall agree on the goods and services that shall be accepted for payment and their value. If the receiving Party does not provide the agreed upon goods or services to the supplying Party within one year of the original transaction, the method of payment shall convert to Payment-in-cash.

2. When a definitive price for the Order is not agreed to in advance, the Order, pending agreement on final price, shall set forth a maximum liability for the Party ordering the Logistic Support, Supplies, and Services. The Parties shall then promptly enter into negotiation to establish the final price.

3. POCs for payments and collections for each Party are identified in annexes to this Agreement.

4. Logistic Support, Supplies, and Services that are available for a lesser price under another agreement shall be priced under this Agreement at the lower price.

VI. WAIVED OR EXCLUDED COSTS

Insofar as national laws and regulations permit, the Parties shall ensure that any readily identifiable duties, taxes, and similar charges are not imposed on activities conducted under this Agreement. The Parties shall cooperate to provide proper documentation to maximize tax and customs relief. The provisions of any applicable tax and customs relief agreements shall also apply under this Agreement. The Parties shall inform each other whether the price charged for Logistic Support, Supplies, and Services includes taxes or duties. In determining whether duties, taxes and similar charges should be levied, the pricing principles in section V, and in particular section V, paragraph 1, subparagraph c, will govern the value of the support, supplies, or services provided by the supplying Party.

VII. WARRANTIES

Each party will endeavor to ensure that any manufacturer's warranty covering Logistics Support, Supplies and Services provided by the supplying Party will be honored after any acquisition or transfer to the receiving Party.

VIII. SECURITY OF INFORMATION

It is the intent of the Parties that activities under this Agreement and any Implementing Arrangements be carried out at the unclassified level. Unless specifically authorized by separate written agreement or arrangement, no classified information or material shall be provided or generated under this Agreement or any Implementing Arrangements.

IX. INTERPRETATION AND REVISION OF INFORMATION

1. Any disagreements regarding the interpretation or application of this Agreement, any Implementing Arrangements, or transactions executed hereunder shall be resolved through consultation between the Parties and shall not be referred to any international tribunal or third party for settlement.
2. Either Party may, at any time, request revision of this Agreement by giving the other Party 90 days advance written notice. In the event such a request is made, the two Parties shall promptly enter into negotiations. This Agreement may only be amended by written agreement between the Parties. Replacement of Annexes B through N, which list POCs, may be done by the Parties without formal amendment of this Agreement.

X. EFFECTIVE DATE AND TERMINATION

1. This Agreement, which consists of a Preamble, Articles I-X, and Annexes A through N, shall enter into force on the date of the last signature and shall be in force for a period of ten (10) years and will be automatically extended for a subsequent period of ten (10) years, unless one of the Parties notifies the other Party in writing, through diplomatic channels, of its intention to terminate this Agreement, at least six (6) months prior to its expiration.

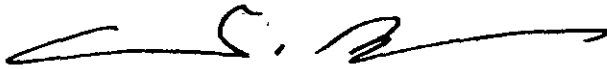
2. This Agreement may be terminated by either Party giving not less than six (6) months notice in writing to the other Party.

3. Notwithstanding termination of this Agreement, all reimbursement obligations incurred pursuant to its terms shall remain binding on the responsible Party until satisfied.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.


DONE, in duplicate in the English language.

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA



Christopher J. LaFleur
Ambassador, US Embassy Malaysia
on: 9 May 2005

FOR THE GOVERNMENT
MALAYSIA



Dato' Sri Subhan Jasmon
Secretary General, Ministry of Defence
on: 9 May 2005

ANNEX A

MINIMUM ESSENTIAL DATA ELEMENTS

- 1) Implementing Arrangements or support Arrangement
- 2) Date of Order
- 3) Designation and address of office to be billed
- 4) Numerical listing of stock numbers of items, if any
- 5) Quantity and description of material/services requested
- 6) Quantity furnished
- 7) Unit of Measurement
- 8) Unit price in currency of billing country
- 9) Quantity furnished (6) multiplied by unit price (8)
- 10) Currency of billing country
- 11) Total Order amount expressed in currency of billing country
- 12) Name (typed or printed), signature, and title of authorized Ordering or requisitioning representative
- 13) Payee to be designated on remittance
- 14) Designation and address of office to receive remittance
- 15) Recipient's signature acknowledging service or supplies received on the Order or requisition or a separate supplementary document
- 16) Document number of Order or requisition
- 17) Receiving organization
- 18) Issuing organization
- 19) Transaction type
- 20) Fund citation or certification of availability of funds when applicable under Parties' procedures
- 21) Date and place of original transfer; in the case of an exchange transaction, a replacement schedule including time and place of replacement transfer
- 22) Name, signature and title of authorized acceptance official

23) Additional special requirement, if any, such as transportation, packaging, etc.

24) Limitation of government liability

25) Name, signature, date and title of supplying Party official who actually issues supplies or services

ANNEX B

HQ MALAYSIAN ARMED FORCES

**POINTS OF CONTACT
ORDERING AND FINANCIAL RESPONSIBILITIES**

The **MALAYSIAN ARMED FORCES** POC for coordinated placement and acceptance of orders under this implementing Arrangement is the **Development, Plan & Joint Ops Branch**:

- a. Unit: **Defence Logistics Division**
- b. Telephone: **011-60-3-20712569**
- c. Fax: **011-60-3-26943481**
- d. Mailing Address: **Defence Logistics Division
Malaysian Armed Forces Headquarters
Ministry of Defence
9th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia**

The **HQ MALAYSIAN ARMED FORCES** responsible for payments and collections in support of this implementing Arrangement is the **Comptroller**:

- a. Unit: **Logistics Support Coordinating Branch**
- b. Telephone: **011-60-3-20713566**
- c. Fax: **011-60-3-26943481**
- d. Mailing Address: **Defence Logistics Division
Malaysian Armed Forces Headquarters
Ministry of Defence
9th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia**

HQ MALAYSIAN Air Force

**POINTS OF CONTACT
ORDERING AND FINANCIAL RESPONSIBILITIES**

The HQ MALAYSIAN AIR FORCE POC responsible for approving, placing, and accepting orders under this implementing Arrangement is Headquarters MALAYSIAN Air Force - Materiel Division

- a. Unit: Materiel Management HQ : Royal Malaysian Air Force
Department
- b. Telephone: 011-60-3-20714084
- c. Fax: 011-60-3-26926698
- d. Mailing Address: Royal Malaysian Air Force
(Director of Materiel)
Ministry of Defence
18th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia

The HQ Malaysian Air Force POC responsible for payments and collections for this implementing Arrangement is Headquarters Royal Malaysian Air Force – Materiel Division

- a. Unit: Finance Management
- b. Telephone: 011-60-3-20714510
- c. Fax: 011-60-3-26946978
- d. Mailing Address: Royal Malaysian Air Force
(Director of Materiel)
Ministry of Defence
18th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia

HQ MALAYSIAN Army

**POINTS OF CONTACT
ORDERING AND FINANCIAL RESPONSIBILITIES**

The HQ MALAYSIAN Army POC responsible for approving, placing, and accepting orders under this implementing Arrangement is Headquarters MALAYSIAN Army:

- a. Unit: Logistics Department HQ: Army Headquarters
- b. Telephone: 011-60-3-20712707
- c. Fax: 011-60-3-26985445
- d. Mailing Address: Army Headquarters
Logistics Department
14th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia

The HQ Malaysian Army POC responsible for payments and collections for this implementing Arrangement is the:

- a. Unit: Human Resource Department
- b. Telephone: 011-60-3-20714976
- c. Fax: 011-60-3-26919249
- d. Mailing Address: Army Headquarters
Human Resource Department
13th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia

HQ ROYAL MALAYSIAN Navy

**POINTS OF CONTACT
ORDERING AND FINANCIAL RESPONSIBILITIES**

The **HQ ROYAL MALAYSIAN Navy** POC responsible for **approving, placing, and accepting orders** under this implementing Arrangement is Headquarters, **ROYAL MALAYSIAN Navy**:

- a. Unit: **Logistics Directorate Materiel HQ: Royal Malaysian Navy**
- b. Telephone: **011-60-3-20713293**
- c. Fax: **011-60-3-26984651**
- d. Mailing Address: **Naval Headquarters
Ministry of Defence
17th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia
(Att: Director General Materiel)**

The **HQ Royal Malaysian Navy** POC responsible for **payments and collections** for this implementing Arrangement is the:

- a. Unit: **Logistics Directorate Materiel**
- b. Telephone: **011-60-3-20713293**
- c. Fax: **011-60-3-26984651**
- d. Mailing Address: **Naval Headquarters
Ministry of Defence
17th Floor, Wisma Pertahanan
Jalan Padang Tembak
50634 KUALA LUMPUR, Malaysia
(Att: Director General Materiel)**